

Assembly Bill No. 3058

CHAPTER 693

An act to amend Section 80110 of the Water Code, relating to electricity, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3058, Committee on Utilities and Commerce. Electric power contracts: just and reasonable charges.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

Existing law authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. Existing law requires the department to retain title to all electricity sold by it to retail end-use customers and provides that the department is entitled to recover its costs as a revenue requirement. Existing law requires any determination with regard to whether the rates and charges that apply to those contracts are just and reasonable to be made by the department and not the commission.

This bill, with certain exceptions, would require the department, prior to the execution of any modification of a contract for the purchase of power by the department, on or after the effective date of the bill, to provide a written report to the commission setting forth the justification for the determination that the proposed modification is just and reasonable. The bill would require the commission to review the written report and make public its comments. The bill would prohibit the department from executing the proposed contract modification if the commission recommends against it.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 80110 of the Water Code is amended to read:

80110. (a) The department shall retain title to all power sold by it to the retail end-use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.

(b) The revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.

(c) (1) For the purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. Prior to the execution of any modification of any contract for the purchase of power by the department pursuant to this division, on or after the effective date of this section, the department or the commission, as applicable, shall do the following:

(A) The department shall notify the public of its intent to modify a contract and the opportunity to comment on the proposed modification.

(B) At least 21 days after providing public notice, the department shall make a determination as to whether the proposed modifications are just and reasonable. The determination shall include responses to any public comments.

(C) No later than 70 days before the date of execution of the contract modification, the department shall provide a written report to the commission setting forth the justification for the determination that the proposed modification is just and reasonable, including documents, analysis, response to public comments, and other information relating to the determination.

(D) Within 60 days of the date of receipt of the department's written report, the commission shall review the report and make public its comments. If the commission in its comments recommends against the proposed modification, the department shall not execute the proposed contract modification.

(2) This subdivision does not apply to the modification of a contract modified to settle litigation to which the commission is a party.

(3) This subdivision does not apply to the modification of a contract for the purchase of electricity that is generated from a facility owned by a public agency if the contract requires the public agency to sell electricity to the department at or below the public agency's cost of that power.

(4) This subdivision does not apply to the modification of a contract to address issues relating to billing, scheduling, delivery of electricity, and related contract matters arising out of the implementation by the Independent System Operator of its market redesign and technology upgrade program.

(5) (A) For purposes of this subdivision, the department proposes to "modify" a contract if there is any material change proposed in the terms of the contract.

(B) A change to a contract is not material if it is only administrative in nature or the change in ratepayer value results in ratepayer savings, not to exceed twenty-five million dollars (\$25,000,000) per year. For the purpose of making a determination that a change is only administrative in nature or results in ratepayer savings of twenty-five million dollars (\$25,000,000) or less per year, the executive director of the commission shall concur in writing with each of those determinations by the department.

(d) The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission.

(e) In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end-use customers as provided in this division.

(f) After the passage of a period of time after February 1, 2001, as shall be determined by the commission, the right of retail end-use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department no longer supplies power hereunder. The department shall have the same rights with respect to the payment by retail end-use customers for power sold by the department as do providers of power to the customers.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the Public Utilities Commission to conduct a review of the just and reasonable review for modifications of contracts entered into under Section 80110 of the Water Code as soon as possible, it is necessary that this act take immediate effect.